



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201015030

JAN 21 2010

Uniform Issue List: 408.03-00

SE'T'EP: RA:TI

Legend:

Taxpayer A	=
IRA B	=
Company C	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated June 29, 2009, as supplemented by additional correspondence dated August 21 and November 16, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from an individual retirement account (IRA B), maintained with Financial Institution C.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, represents that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to incorrect advice and assistance, concerning self-directed IRAs, given by the attorney who established Company C.

Taxpayer A maintained IRA B, an individual retirement annuity under section 408(b) of the Code. In November of 2008, Taxpayer A met the attorney who established Company C, a privately held Limited Liability Company ("LLC"). Taxpayer A's intention was to keep Amount 1 in an IRA. Taxpayer A represents that the attorney assured Taxpayer A that purchasing a share of Company C could be an appropriate investment for her IRA and soon after this meeting, Taxpayer A

attended a seminar on self directed IRAs. Taxpayer A represents that the seminar confirmed that using IRA assets to purchase an interest in Company C would comply with the Code. Without directly consulting any professionals concerning the investment in the privately held LLC, on January 15, 2009, Taxpayer A withdrew Amount 1 from IRA B and purchased a share in Company C. On June 20, 2009, the accountant for Company C notified Taxpayer A that he believed that her investment in Company C, as constituted, did not qualify as a self-directed IRA. Upon further review, Taxpayer A discovered that she needed a separate IRA that would permit self-directed investments. Taxpayer A argues that she relied on the professionals she consulted and did not understand the need for a separate IRA trustee from the LLC trustee. None of the legal and financial professionals Taxpayer A consulted admitted any wrongdoing with respect to the advice and information Taxpayer A received.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that Taxpayer A withdrew Amount 1 from IRA B with the stated intent to purchase a share of Company E in a self-directed IRA. However, Taxpayer A did not understand the self-directed IRA requirements and invested Amount 1 in a non-IRA asset.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected her ability to timely rollover Amount 1. The information presented indicates that the failure to rollover Amount 1 into an IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A.

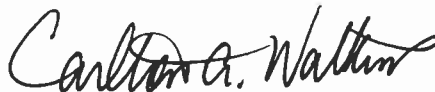
Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B and thus Amount 1 will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
(I.D. #), at () .

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

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